

## Department of Health and Human Services

## § 75.215

policy). Where appropriate, the Federal award may include specific performance goals, indicators, milestones, or expected outcomes (such as outputs, or services performed or public impacts of any of these) with an expected timeline for accomplishment. Reporting requirements must be clearly articulated such that, where appropriate, performance during the execution of the Federal award has a standard against which non-Federal entity performance can be measured. The HHS awarding agency may include program-specific requirements, as applicable. These requirements should be aligned with agency strategic goals, strategic objectives or performance goals that are relevant to the program. See also OMB Circular A-11, Part 6 for definitions of strategic objectives and performance goals.

(e) Any other information required by the HHS awarding agency.

### § 75.211 Public access to Federal award information.

(a) In accordance with statutory requirements for Federal spending transparency (*e.g.*, FFATA), except as noted in this section, for applicable Federal awards the HHS awarding agency must announce all Federal awards publicly and publish the required information on a publicly available OMB-designated government-wide Web site (at time of publication, [www.USAspending.gov](http://www.USAspending.gov)).

(b) Nothing in this section may be construed as requiring the publication of information otherwise exempt under the Freedom of Information Act (5 U.S.C. 552), or controlled unclassified information pursuant to Executive Order 13556.

### § 75.212 Suspension and debarment.

Non-federal entities and contractors are subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR parts 180 and 376. These regulations restrict awards, sub-awards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

### § 75.213 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. 205, declares that the metric system is the preferred measurement system for United States trade and commerce. HHS awarding agencies will follow the provisions of Executive Order 12770.

### § 75.214 Disclosure of lobbying activities.

Recipients are subject to the restrictions on lobbying as set forth in 45 CFR part 93.

### § 75.215 Special provisions for awards to commercial organizations as recipients.

(a) This section contains provisions that apply to awards to commercial organizations. These provisions are in addition to other applicable provisions of this part, or they make exceptions from other provisions of this part for awards to commercial organizations.

(b) Prohibition against profit. Except for awards under the Small Business Innovation Research (SBIR) and Small Business Technology Transfer Research (STTR) programs (15 U.S.C. 638), no HHS funds may be paid as profit to any recipient even if the recipient is a commercial organization. Profit is any amount in excess of allowable direct and indirect costs.

(c) Program Income. Except for grants for research, program income earned by a commercial organization may not be used to further eligible project or program objectives except in the SBIR and STTR programs.

(d)(1) Commercial organizations that receive awards (including for-profit hospitals) have two options regarding audits:

(i) A financial related audit of a particular award in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States, in those cases where the commercial organization receives awards under only one HHS program; or, if awards are received under multiple HHS programs, a financial related audit of all awards in accordance with Generally Accepted Government Auditing Standards issued

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by the Comptroller General of the United States; or

(ii) An audit that meets the requirements contained in subpart F.

(2) Commercial organizations that receive annual awards totaling less than the audit requirement threshold in subpart F are exempt from HHS audit requirements for that year, but records must be available for review by appropriate officials of Federal agencies or the Government Accountability Office. (See § 75.501).

### **§ 75.216 Special provisions for awards to Federal agencies.**

(a) In order for an HHS awarding agency to make a Federal award to a Federal agency, the HHS awarding agency must have statutory authority that makes such Federal agency explicitly eligible for a Federal award.

(b) All provisions of this part and other HHS regulations apply to Federal entities receiving Federal awards, except for the following:

(1) Except for grants for research, any program income earned by a Federal institution must be used under the deduction alternative. Any program income earned after the end of grant support should be returned to the United States Treasury.

(2) No salary or fringe benefit payments may be made from HHS awarding agency grant funds to support career, career-conditional, or other Federal employees (civilian or uniformed services) without permanent appointments at a Federal institution receiving a grant. While the level of effort required for the project must be allowed by the recipient as part of each individual's official duties, salary costs associated with an individual participating in an official capacity as a Federal employee under a grant to that Federal institution are not allowable costs under an HHS awarding agency grant.

(3) Federal agencies may not be reimbursed for indirect costs under Federal awards.

### **§ 75.217 Participation by faith-based organizations.**

The funds provided under this part must be administered in compliance with the standards set forth in 45 CFR part 87.

## **45 CFR Subtitle A (10–1–15 Edition)**

### **Subpart D—Post Federal Award Requirements**

#### **STANDARDS FOR FINANCIAL AND PROGRAM MANAGEMENT**

### **§ 75.300 Statutory and national policy requirements.**

(a) The Federal awarding agency must manage and administer the Federal award in a manner so as to ensure that Federal funding is expended and associated programs are implemented in full accordance with U.S. statutory and public policy requirements: Including, but not limited to, those protecting public welfare, the environment, and prohibiting discrimination. The Federal awarding agency must communicate to the non-Federal entity all relevant public policy requirements, including those in general appropriations provisions, and incorporate them either directly or by reference in the terms and conditions of the Federal award.

(b) The non-Federal entity is responsible for complying with all requirements of the Federal award. For all Federal awards, this includes the provisions of FFATA, which includes requirements on executive compensation, and also requirements implementing the Act for the non-Federal entity at 2 CFR part 25 and 2 CFR part 170. See also statutory requirements for whistleblower protections at 10 U.S.C. 2324 and 2409, and 41 U.S.C. 4304, 4310, and 4712.

### **§ 75.301 Performance measurement.**

The HHS awarding agency must require the recipient to use OMB approved standard information collections when providing financial and performance information. As appropriate and in accordance with above mentioned information collections, the HHS awarding agency must require the recipient to relate financial data to performance accomplishments of the Federal award. Also, in accordance with above mentioned standard information collections, and when applicable, recipients must also provide cost information to demonstrate cost effective practices (*e.g.*, through unit cost data). The recipient's performance should be measured in a way that will